

1952.

File No. Est. I. D. S.
(Cri) /52



P-15
E

Legal Dept

BRANCH

Subject:— Establishment of Gazetted
Officers Deputy Secretary to
Government (Criminal) Legal
Dept Appointment & Leave of

File No.

Est. I. D. S. /52
(Cri)

Gen. 194 e.

293-(

Legal Department.

I officiated as District and Sessions Judge of Broach and Panch Mahals from 27-9-48 to 20-1-1949 when due to the recruitment of the four direct District Judges from the Bar, I along with Shri Manjeshwar and Nazareth who are above me, and Shri Manik, who is below me, reverted as Assistant Judges. Subsequently Shri Manjeshwar and Nazareth have been acting as District Judges for most of the time and Shri Manik who, as stated, is next below me, acted as District and Sessions Judge (as Joint Judge, Ahmedabad) from 3rd September 1950 to 11th April 1950 and again from 12th April 1950 to 13th May 1950. Had I not been working as Deputy Secretary (Criminal Law) in the Legal Department during this period, I should have acted as District Judge. Under the circumstances, I request that I may be given the benefit of the next below rule and orders may be passed accordingly.

Sd. J.D. Ghogle

Deputy Secretary/

Secretary

H.D. and F.D. will have to be consulted on this point.

U.O.R. to H.D. & F.D. No. 5386 dt. 4-4-51.

S.C. 30/6

4 copies.

It will be seen from the papers placed below that
as stated by Shri Ghogale, Dy. Secy, Legal Deptt.
in his foregoing note, Shri Manek was acting as Jr.
Judge Addl. Session Judge, A'bad from 3-9-49
to 11-4-50, & as Distt & Sessions Judge
from 12-4-50 to 13-5-50. As Shri Ghogale is
Senior to Shri Manik, it was Shri G's turn
to officiate as Distt. & Sessions Judge, A'bad.
He is therefore entitled to the benefit
of the next below rule. The H.D. may support the
foregoing proposal. The P. & S.D. may see.

Sd/ 13-4-51.

Sd.
23-4-51.

U.O.R. to P. & S.D. dt. 23.11.51.

S .C. 30/6

4 copies.-

Attention is in this connection invited to copies of proceedings typed as accompaniment to G.E.,P.& S.D. , No. 5629/34-D dated 25-4-1947 which gives the guiding principles to regulate grant of benefit under the next below rule.

2. It would appear from the Dy. Secy. L.D.'s note dated 3-4-51 and H.D.'s note dated 23-4-1951 that there is a prima facie case for giving the benefit of "next below rule" to Shri Ghogale for the period 3rd Sept. 1949 to 11-4-1950 provided the following conditions are satisfied".

(a) It was not possible to release Shri Ghogale during the period to take up the appointment of District and Session Judge.

(b) It will have to be certified by a competent authority who makes such apptts. that but for his apptt. as D.S.,L.D. he would have been appointed as District and Sessions Judge during the period 3-9-1949 to 11-4-1950.

(c) All officers senior to Shri Ghogale were also drawing offg. pay in the scale of District and Session Judge unless they were passed over for spl. reasons such as, inefficiency or unsuitability or they were on leave or on deputation.

(d) No other officer has been given the benefit of the "next below rule " on account of Shri Manik acting as District and Sessions Judge.

The L.D. may be requested u.o. to state whether the above conditions are satisfied by giving facts and particular That Deptt. may also be requested to state what pay Shri Ghogale was getting during the period viz. 3-9-49 to 11-4-50 as Dy. Secy. in L.D. and what pay he would get under the next below rule.

3. As regards the request for benefit of "next below rules" for the period 12-4-1950 to 13-5-1950 during which his junior Shri Manik acted as District and Sessions Judge, the same cannot be allowed in view para. 4 of G. of I.,F.D.

letter No. F.2(25)-EST-III/46 dated the 2nd April 1947 typed as an accompaniment to G.E., P. & S.D., No. 5629/34-D dated the 25th April 1947 which disallows the benefit under the "next below rule" for short periods not exceeding three months.

4. The attention of the L.D. may also be invited to the last sub-para of para. 4 of the G. of I. letter referred to at "A" above. That Deptt. will have to consider the question of releasing Shri Ghogale in case there is a chance of his getting the higher offg. promotion for more than 6 months again.

Sd.
5-6-51.

Sd.
7-6

U.O.R. to Legal Deptt. dated 8-6-51.

S.C. 30/6

4 copies.

H.D.(A).

Shri T.P.Ghogale stands immediately above Shri M.D.Manek in seniority. Shri Manek took charge of the office of the Jr. Judge and Addl. S. J. on 3-9-49. His ~~mt~~ apptt. was notified in G.N., P. S.D. (Home) ; No. S/41/3/74, dt. 12-9-49 Shri Ghogale would have been appointed to officiate as JT. Judge and Addl. S. J. A'bad, had he not been working as Dy. Secy. L.D. at that time. In this connection it may be stated that Shri G. had officiated as D. & S.J. Prior to his apptt. as D.S., L.D. so also all his seniors. In the circumstances, it may be certified that the conditions mentioned in sub-paras (b) 'c) and (d) of F.D.'s note, dt. 5-6-51, are satisfied in this case. The A.G. Bombay, may be requested us to verify the period for which Shri Manek officiated as JT. Judge & Addl. S.J. A'bad and confirm the statement that all officers senior to Shri Ghogale were also drawing officiating pay in the scale of D. & S. Js.

Sd/-

14-7-51.

U.O.R. to A.G. B'bay dt. 16.7.'51.

S.C. 2/7

4 copies.

A.G.'s office, Bombay.

Returned with compliments to the Secretary to
Govt. Home Deptt. Bombay.

Shri H.D.Manek who is junior to Shri Chogale
officiated as District and Sessions Judge and addl.
Sessions Judge Ahmedabad for the period from 4-9-49
to 11-4-50. His seniors in the order in which their
names are listed below also officiated in the scale of
the Indian Administrative Service (Sr. grade) which
is applicable to Dt. and Sessions Judges for the said
period :-

- 1). B.V.Manjeswar.
- 2). J.R.Nazereth.

sd/- H.V.Jog.
A.A.O.

U.O.R. to Secretary to Govt. of Bombay. Home Deptt.
No. GVII BJS / 3941 dt. August 51.

Legal Department,

R.I.No. 19633
5-1-51 to 21-9-51.

Submitted with reference to F.D. note dated 7-6-51 on pp. 3-4 ante.

2. F.D. has stated that there is a prima facie case for giving the benefit of next below rule to Shri Ghogale for the period 3-9-49 to 11-4-1950 provided the following conditions are satisfied.

(a) It was not possible to release Shri Ghogale during the period to take up the appointment of District and Sessions Judge.

(b) It will have to be certified by a competent authority who makes such appts. that but for his apptt. as D.S., L.D., he would have been appointed as District and Sessions Judge during the period 3-9-1949 to 11-4-1950.

(c) All officers senior to Shri Ghogale were also drawing offg. pay in the scale of District and Sessions Judge unless they were passed over for spl. reasons such as inefficiency or unsuitability or they were on leave or on deputation.

(d) No other officer has been given the benefit of the "next below rule" on account of Shri Manik acting as District and Sessions Judge.

3. The Home Department which was consulted in the matter states that it may be certified that the conditions mentioned in sub-para. (b), (c) and (d) of F.D.'s note dated 5-6-51 are satisfied in this case. The A.G., Bombay who was asked to verify the period for which Shri Manik officiated as District Judge and Addl. S.J., Ahmedabad and to confirm the Statement that all officers senior to Shri Ghogale were also drawing offg. pay in the scale of D. & S. Js. states that Shri Manik who is junior to Shri Ghogale officiated as D. & S.J. and Addl. Sessions Judge, Ahmedabad for the period from 4-9-49 to 11-4-50. His seniors, M/S. B.V. Manjeswar and J.R. Nazereth also officiated in the scale of the I.A.S. (Sr. grade) which is applicable to D. & S.Js. for the said period.

4. As regards the condition mentioned in sub-para. (a) it

Submitted with reference to this Deptt. note dt. 5-6-51.

2. Pl. see subsequent proceedings, particularly the foregoing L.D. note. It will be seen therefrom that while all the conditions for invoking the application of the Next below rule are apparently satisfied, the pitch arises in regard to "A" of this Deptt. note with ref. to which the position in respect of pay etc. of Shri Ghogale vis-a-vis his junior Shri Manik, will, as stated by the L.D., be as follows :*

Shri Ghogale's pay.

<u>As Dy. Secy. L.D.</u>	<u>As Distt & Session Judge under the Next Below rule.</u>
Rs. 850 Pay.	Rs. 900 pay
Rs. 200 Spl. pay.	
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Rs. 1050	Rs. 900

Thus Shri G. was actually getting a total pay of Rs. 1050/- P.M. besides C.A. of Rs. 75/- during the period from 4-9-'49 to 11-4-'50 as against a pay of Rs. 900/- only which he would have got had he been appointed as D. & S Judge, under the Next below rule, which Briefly put, is as follows .- when an officer in a post is for any reason prevented from officiating in his turn in a post on a higher scale or grade borne on the cadre of the service to which he belongs, he may be authorised by spl. order of the appropriate authority pro forma officiating . promotion into such scale or grade and thereupon be granted pay of that scale or grade, if that be more advantageous to him. on each occasion on which the officer immediately junior to him in the cadre of his service draws officiating pay in that scale or grade. It is therefore clear, in view of the portion underlined above, that the pay Shri G. drew as Dy. Secy. (which also includes Spl pay permanently attached to the post plus C.A. of Rs. 75/-) was ~~includes Spl. pay permanently attached &~~ more advantageous to him than the pay of Rs. 900/- only he S.C.2

would have drawn, had he officiated as D & S. Judge, under the "Next below rule". The mere fact that his basic pay as Dy. Secy. was less than that as D. & S. Judge, by Rs. 50/- P.M. academic as it is, may not be allowed to be made the ground for sanctioning further concessions under the Next below rule. The L.D. may therefore be informed that as Shri G. as Dy. Secy. has not stood to lose, on the contrary, was in a more advantageous position vis-a-vis his junior Shri M, (officiating as D. & S. Judge). in respect of pay (which also includes Spl. pay etc.) there is no case for giving him further concession under the Next below rule

Let me see the orders fixing of a D.S. in Legal Deptt. and also discussion underlying the forcing of the "Next below rule".

Submitted with reference to Secy's note

dt. 2-11-1951..

2. All possible attempts were made to obtain the pps. from the L.D. regarding the fixation of pay of Shri Goghale as Dy. Secy. , L.D. but without success, as the pps. in question were stated to have been forwarded to the Govt. of Madras. Some ppa. were forwarded to this Deptt. which, however, were of no relevance to the question under consideration in these ppa. Efforts were then made to get the pps. relating to the fixation of pay of any Dy. Secy. drafted from the cadre of Asstt. Judges etc. from the Districts. But even these pps, it was gathered, had been sent to the Govt. of Madras, in response to their request. It was, however, ascertained from that Deptt. that an Asstt. Judge drawn from the Districts, would, on apptmt. as Dy Secy. in the L.D. get his own grade pay plus Rs. 200/- p.m. Spl. pay plus Rs. 75/- B.M. C.L.A.

3. As regards the discussion underlying the "Next below rule", it may be noted from a reference to the relevant file - that there are no discussions as such on the records of this Deptt. In fact the orders re: the "Next below rule", which is not, strictly speaking, a rule as such but an accepted convention, are orders of Govt. of India, as approved by the former Secretary of State and this Govt. has only adopted it as a working rule for its servants. The various orders of Govt. of India as approved by the former Secy. of State and also embodying the clarifications made in that connection, issued from time to time have been brought together, in a bunch, for ready reference.

4. Apparently Shri G. Also drew the although not specifically stated ~~in~~ anywhere on these papers, as admirable to pay stationed for duty in Bombay City. (Vide G.R.F.D. No. 6567/33-III, dt. 6-7-48).

Sd.
3-12-51.

The working rule is referred to in para 2 of G of 1 to letter no. F. 2 (25) EST-III / 46 dated 2-4-47 (in the bunch slipped "X") Support the stand taken in dated the 1-11-50 at pp. 11-12 ante.

Sd.
5-12-51.

It would not be correct to take into account either the special pay or the compensatory allowance in determining the question of giving the benefit under the "Next below rule". As stated in the Govt. of India, Finance Department, letter of the 2nd April 1947. the point at issue is whether the officer concerned was prevented from officiating in his turn in a post on higher ~~xx~~ scale ~~of~~ or grade borne on the cadre of the service to which he belonged. If this be so and the other conditions specified are fulfilled, he is to be given pro forma officiating promotion. As the conditions are satisfied, I agree to the grant of

the benefit of the "Next below rule" to Shri Ghogale.

2. This, however, raised a wider question. It is evident from the manner in which the case has arisen that, notwithstanding the certificate given by the Legal Department regarding the possibility of releasing Shri Ghogale for taking up appointment as a District and Sessions Judge, the question whether he could be so released or not was not considered at the time of appointing Shri Manik as Joint Judge. After all, that question must be decided when the promotion was made; and if the question had been considered then, the proposal to grant Shri Ghogale the benefit of the "Next below rule" would have been made in September 1949 and not now. It is necessary, therefore, that the administrative departments should, when referred the claim of any senior official otherwise fit for promotion examine the probability of claims under the "Next below rule" arising and if such a problem arises at all, decide the question of granting the benefit of the "Next below rule" at the time in consultation with F.D. Such requests should not be entertained at a later date. The point is relevant that if Shri Ghogale had been faced with the prospect of going out as a Joint Judge for a few months and thereby losing his special pay, he might have preferred to continue in his appointment and forgone his right of promotion. Such questions will become academic if not thrashed out in time. A suitable circular must issue in consultation with P. & S.D., if necessary.

Sd/-
7-11

U.O.R. to L.D. dt. 7-12-51.

Submitted

The F.D. Secy. agrees to the grant of the benefit of the "Next below Rule" to Shri Ghogale, Thus Shri G. would have got next higher stage while officiating as District & Sessions Judge. His pay may be fixed at Rs. 900/- p.m. the necessary memo. to the A.G. , Bombay is put for approval.

Sd/
13-12.

A. S. Sd/- J.D.
14-12

S.C. 2/7

4 copies.

No. 2688

Legal Department.

Bombay Castle (Bombay No. 1). 19th February
1952.Memorandum.

The undersigned presents compliments to the Accountant General, Bombay and is directed to state that as Shri M.D. Manek officiated as District and Sessions Judge and Additional Sessions Judge, Ahmedabad for the pay of Shri T.P. Ghogale, ex-Deputy Secretary to Government, Legal Department has been refixed for the period in question, under the next below rule at Rs. 900/- plus Special pay of Rs. 200/- plus Compensatory Allowance of Rs. 75/- per month plus the Dearness Allowance admissible.

2. The extra cost should be met from the sanctioned current year's Budget provision under "25 General Administration - C Secretariat and Headquarters Establishment - K. 7 Legal Department - Pay of Officers.

By order of the Governor of Bombay.

Sd/-

Additional Secretary to Government.

To,

The Accountant General, (through the Finance Department)

Copy to :-

The Finance Department.
The Home Department,
The P. & S. Department,
Shri T.P. Ghogale, District and Sessions Judge,
Mehsana,

Subd. for signature

Sd/-

15-12

Sd/-

17-12

A.S. The memo may issue after U.R. to F.D. & H.D.

U.R. to F.D. and H.D. No. 20270 dt, 19.12.'51.